IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 13TH MARCH 2007 / 22ND PHALGUNA 1928

WP(C).No. 18284 of 2005(B)

PETITIONER:

M/S.A.V.G.MOTORS LIMITED ANCHERIL BUILDINGS, BAKER JUNCTION, KOTTAYAM, REPRESENTED BY ITS DIRECTOR A.V.GEORGE.

BY ADV. SRI.JOSEPH KODIANTHARA
SRI.MITHUN MARKOS

RESPONDENTS:
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1. **THE KERALA STATE ELECTRICITY BOARD, VYDYUTHI BHAVANAM, PATTOM, THIRUVANANTHAPURAM. REPRESENTED BY ITS SECRETARY.**

2. **THE DEPUTY CHIEF ENGINEER, APTS, VYDYUTHI BHAVANAM, PATTOM, THIRUVANANTHAPURAM.**

3. **THE ASSISTANT EXECUTIVE ENGINEER, ELECTRICAL SUB DIVISION, KOTTAYAM.**

4. **THE ASSISTANT ENGINEER, KERALA STATE ELECTRICITY BOARD, ELECTRICAL SECTION, KOTTAYAM EAST.**

BY ADV. SRI.JOSE J.MATHEIKEL, SC, KSEB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.18284/2005

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE ADDITIONAL BILL DT.1.7.03 ISSUED BY THE RESPONDENTS TO PETITIONER.

EXT.P2:- COPY OF THE PROCEEDINGS DT.17.7.03 ISSUED FROM THE 4TH RESPONDENT.

EXT.P3:- COPY OF THE JUDGMENT IN WP(C) NO.24794/03 DT.4.8.03 PASSED BY THIS HON'BLE COURT.

EXT.P4:- COPY OF THE JUDGMENT IN WP(C) NO.37423/03 DT.28.11.03 PASSED BY THIS HON'BLE COURT.

EXT.P5:- COPY OF THE ORDER IN APPEAL DT.16.8.04 PASSED BY THE 2ND RESPONDENT.

EXT.P6:- COPY OF THE JUDGMENT IN WP(C) NO.29806/04 DT.12.10.04 PASSED BY THIS HON'BLE COURT.

EXT.P7:- COPY OF THE ORDER DT.20.5.05 OF THE 2ND RESPONDENT.

EXT.P8:- COPY OF THE STATEMENT SHOWING THE DETAILS OF THE CONNECTED LOAD OF THE PETITIONER'S WORKSHOP AS CERTIFIED BY THE ELECTRICAL CONTRACTORS.

EXT.P9:- COPY OF THE LAYOUT DRAWING OF THE PETITIONER'S WORKSHOP PREMISES DULY CERTIFIED BY THE ELECTRICAL CONTRACTORS – M/S. FULLBRIGHT ELECTRICALS .

EXT.P10:- COPY OF THE VARIOUS AREAS OF THE PETITIONER'S WORKSHOP.

RESPONDENTS EXHIBITS

EXT.R3(a):- COPY OF THE REPORT SUBMITTED BY DY.CE.

EXT.R3(b):- COPY OF THE REVISED BILL.

EXT.R3(c):- COPY OF THE JUDGMENT IN WP(C) 29806/04.

EXT.R3(d):- COPY OF THE NOTICE DT.17.3.06 ISSUED BY THE ASSISTANT ENGINEER.

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PIUS C. KURIAKOSE, J.

W.P.(C) No. 18284 OF 2005

Dated this the 13th day of March, 2007

JUDGMENT

The petitioner, M/s.A.V.G. Motors Ltd., who are said to be conducting a workshop for repairing vehicles, is consumer of electricity having consumer No.6339 within the jurisdiction of the 3rd respondent – Assistant Executive Engineer, Electrical Sub Division, Kottayam. The first respondent is the Kerala State Eelctricity Board. The 2nd respondent is the Deputy Chief Engineer APTS, KSEB. The 3rd respondent is the Assistant Engineer, KSEB, Electrical Section, Kottayam and the 4th respondent is the Assistant Engineer.

2. The petitioner's case is that his workshop for repairing vehicles was established in the year 1998 and at the time of commencement of the workshop, he had made application to the respondents for supply of electricity and pursuant thereto electricity connection to his premises was provided by the respondents on 10.10.1998. The respondents classified the petitioner under LT IV Tariff and the petitioner was being billed under the said tariff. While so, the petitioner was surprised to receive Ext.P1 bill dated 1.7.2003 demanding Rs.12,27,689/- purported to be charges for electrical energy consumed during the period from 10/98 to 4/2003. The petitioner also received Ext.P2 proceedings dated

17.7.2003 from the 4th respondent sating that there was a short assessment as the tariff fixed by the KSEB for vehicle service centres is LT VII A and that the petitioner was wrongly being assessed under LT IV Tariff. According to the petitioner, both Exts.P1 and P2 have been issued in violation of principles of natural justice. The petitioner contends that he is running a workshop for repairing vehicles which is correctly classifiable under LT IV and not under LT VII. Against Ext.P1 and P2, the petitioner preferred appeal before the 2nd respondent. He also preferred writ petition before this court seeking to quash Exts.P1 and P2. This court passed Ext.P3 judgment directing to hear the petitioner and dispose of the appeals submitted by the petitioner before the 2nd respondent within two months from the date of production of a copy of that judgment and directing the petitioner to remit the amounts due under Ext.P1 in monthly instalments of Rs.2 Lakhs each. The petitioner once again approached this court complaining that the 2nd respondent has failed to comply with the directions under Ext.P3 judgment. This court vide Ext.P4 judgment disposed of that writ petition directing the 2nd respondent to pass orders on the appeal preferred by the petitioner within one month and grant an absolute stay of proceedings for recovery of further amounts pursuant to Ext.P3. The 2nd respondent heard the appeal preferred by the petitioner and passed Ext.P5 order directing the petitioner to take separate connection for the

service station under LT VIIA tariff and that the work shop should be billed under LT IV tariff and that LT VIIA tariff should continue till segregation and also holding that Ext.P1 penal bill issued to the petitioner is in order. Aggrieved by Ext.P5 order, the petitioner preferred W.P.(C) No.29806/2004 before this court seeking to quash Ext.P5 order and directing the 2nd respondent to reconsider the matter and pass fresh orders. Ext.P6 a copy of the judgment passed by this court setting aside Ext.P5 order and directing the 2nd respondent to reconsider the matter in the light of the observations in Ext.P6 and issue fresh orders after conducting an inspection and after verifying the receipts and after hearing the petitioner and concerned Board Officials. Stay was granted on condition that the petitioner has paid 50% of the demand in terms of the earlier judgments. There was a further direction to the concerned Field Engineer to give separate connection to the service station and to the workshop upon the petitioner complying with the formalities.

3. The petitioner submits that pursuant to Ext.P6, the 2nd respondent heard the petitioner's appeal and disposed of the same by Ext.P7 order finding that the connected load applicable to the petitioner's workshop under LT IV tariff is 14 KW and that therefore the balance load is to be classified as a service station under Lt VII tariff and that the current charges shall be fixed proportionate to the loads.

The 2nd respondent further directed that Ext.P1 will be revised in the proportion mentioned above. The petitioner complains that the 2nd respondent has entered these finding without any basis whatsoever. The 2nd respondent has relied on Board Order No.1384 dated 3.5.2005 in arriving at such findings. The petitioner has not even been served with a copy of that order, which in itself vitiates Ext.P7 order. The petitioner has grievance that none of the arguments raised by him were not considered and has accordingly sought the following reliefs on the basis of the grounds raised in the writ petition.

i). Quash Ext.P7

ii). Quash Exts.P1 and P2

iii). Direct the respondents to issue all future bills properly classifying the petitioner under LT IV Tariff.

iv). Issue a writ of mandamus directing the respondents not to take any coercive action against the petitioner including disconnection of electricity supply for the recovery of further amounts pursuant to Ext.P1 until disposal of this writ petition.

4. The 3rd respondent has filed a detailed counter affidavit, denying the allegations and refuting the grounds. It is contended that the petitioner is running a fully air conditioned new Maruthi Service Station at Kottayam along with a small workshop on it's side. Service connection was obtained under LT IV tariff from the Board with Consumer No. KE 6339. The main operation is the Maruthi Service Centre and sale of new Maruthi Vehicles and not the workshop.

During inspection by APTS on 13.5.2003, it was found that the actual connected load is 65 KW as against the sanctioned load of 57 KW and also found that the majority of the electricity supply is used for operating the service station. It was found that the energy supplied under LT IV tariff was found to be misused for the purpose under LT VIIA tariff. This was why Ext.P1 short assessment bill was issued along with the penal bill. Out of the total demand for Rs.12,27,689/- the petitioner has remitted a total amount of Rs.6,00,000/- Lakhs on the basis of Ext.P3 judgment. By Ext.P3 judgment, this court clearly found that all the activities in the petitioner's unit come under LT VII A tariff. This court specifically directed the Board to give separate connection for service station and the workshop. This court also directed the Deputy Chief En Engineer APTS to dispose of the appeal. In compliance to that Ext.P5 order was passed. Ext.P5 order was again challenged under Ext.P6. This court in Ext.P6 judgment found that the findings in Ext.P5 order are inconsistent and inadequate and set aside the same. This court directed the Deputy Chief Engineer to conduct a fresh inspection after verifying the receipts and after hearing the petitioner and concerned Board Officials. In obedience to that the Deputy Chief Engineer conducted an inspection and submitted a report. A true copy of that report is Ext.R3(a). From Ext.R3(A) it is evident that just 15.375 KW were found to be used for workshop and 53.899 KW was found to be

used for service station. The entire service station area is fully air conditioned and it is a highly sophisticated service station requiring huge consumption of electricity. On the basis of the inspection report, the KSEB issued Board Order No.(FM) 1384/2005 issuing specific directions. On the basis of the said order, Ext.P7 order was issued by the Deputy Chief Engineer. It is submitted that Ext.P7 order is in order. It is further contended in the counter affidavit that the petitioner has not so far submitted report segregating the workshop consumption from the service station area. The petitioner may be directed to submit the same before the Board for effecting the separate service connection. Ext.R3 (b) is a copy of the revised bill . As per Ext.R3(b), an amount of Rs.6,54,131/- is to be adjusted in future bills.

5. The petitioner has filed a reply affidavit. The allegation that the entire service station area is fully air-conditioned and that it is highly sophisticated service station requiring huge consumption of electricity is described as an utterly false one. Petitioner reiterates that there is no service station in the premises and that the car wash is neither a service station nor the main activity of the petitioner. Car wash is not air-conditioned or sophisticated as contended. Ext.R3(a) report was prepared without notice to the petitioner. The contention that only 15.375 KW is used for the workshop and 53.899 KW is used for the service station is described as patently false and mis-leading. The fact

is that as against the admitted connected load of 65 KW, Ext.R3(a) reveals that a total load of 69.274 KW is used which will show that Ext.R3(a) is not reliable. Ext.P8 which is a statement showing the details of connected load of the petitioner's workshop as certified by their electrical contractors M/s.Fullbright Electricals on the basis of Ext.P8 it is claimed that as against the total connected load of 64.978 KW, the load in the car wash area is only 9.2 KW which in other words means that the car wash area has the connected load of just 14.156% of the total load.

6. A lay out drawing of the petitioner's workshop premises certified by M/s.Fullbright Electricals is also produced as Ext.P9. Going by Ext.P9 the car wash area covers only 1,431 sq. feet as against the total area of 28,672 sq. feet. The reply affidavit contends that in the workshop premises there are altogether five window air conditioned units. Out of these, two are located in the workshop drawing room, two others in the workshop front office and one is located in the workshop customer lounge. It is contended that the air conditioned areas covers only a small portion of the total workshop premises. Ext.P10 photographs are also relied in this context by the petitioner. Petitioner prays that an independent Commissioner can be appointed by this Court for inspecting the petitioner's workshop premises for filing a report showing the connected load for the various activities and the areas used

in the workshop and car wash facilities.

7. Heard Sri.Mithun Markose, counsel for the petitioner and Sri.Jose J. Matheikel, Standing Counsel for the Electricity Board. Mr. Mithun Markose would submit that the petitioner is a dealer of new Maruthi vehicles and that it has its main show room at Bakery Junction, Kottayam and workshop service centre at Erayilkadavu. There are separate consumer connections at its shop room and at its workshop. The workshop started in 1998 and ever since it is started functioning all along it has been classified under LT IV. The classification of workshop under LT IV was done by the Electricity Board itself. Mr.Mithun submitted that petitioner's activity at Erayilkadavu is mainly repairing of Maruthi vehicles. It is only carries out accident repairs,replacement of parts and attending to warranty claims of Maruthi vehicles. Petitioner does not operate a service station as contemplated under LT VII(A). Service Station as contemplated in LT VII(A) has to be a place where vehicles are washed, liquid level in a vehicle are checked etc. Vehicles come to petitioner's place for repairing works only. But counsel conceded that there is an area set apart in the petitioner's workshop for use as car wash so that the vehicles are cleaned and washed after repairs are done. Car wash is only an incidental activity which is carried on in the petitioner's workshop according to the learned counsel. He also submitted that the documents placed on record will show that car

wash activity is a minor activity incidental to the main activity which is repairing. The 2nd respondent in Ext.P7 has proceeded on the mistaken premise that vehicle service station is a place where servicing of vehicle is carried out during the warrantee period Et.P7 has therefore been passed stating that since the petitioner is a dealer engaged in the sale of Maruthi vehicles, it is essentially engaged in servicing of vehicles during the warrantee period. The above finding of the 2nd respondent, according to Mr.Mithun is clearly wrong since customer who purchases a new Maruthi vehicle will never take his vehicle for servicing during warranty period or otherwise to a vehicle service station as contemplated in LT VII(A). Counsel referred to the interim order dt.18.11.05 wherein, this Court directed the petitioner to segregate the load in the case of “workshop” and “service station” without being restricted by the observations in Ext.P7 order. Counsel for the petitioner submitted that pursuant to that interim order, petitioner took all necessary steps for segregating the load. But the respondents have failed to energise the segregate loads which is in clear violation of interim order dt.18.11.05 and continues to bill the entire workshop of the petitioner under the higher tariff namely LT VII(A). Counsel further submitted that in any event Ext.P7 is to be quashed since the same is passed on the board order no. (FM) 1384/2005 dt.03.05.05, copy of which has not even been served on the petitioner and also on the basis

of Ext.R3(a) report which is passed on an inspection regarding which the petitioner had no notice.

8. Sri.Jose J. Matheikel, learned Standing Counsel was equally emphatic in his submissions in support of the stand take by the Electricity Board through its pleadings. Learned counsel would draw my attention to Ext.P6 judgment. According to the learned counsel the findings in Ext.P6 are binding on the petitioner and therefore it is too late for the petitioner to contend that they are not conducting any service station at all. There is a clear finding in Ext.P6 that the main work of dealer selling new vehicles is servicing of new vehicles and attending to warranty claims and if the petitioner has only one connection for workshop and service centre, there is no doubt that the main activity for which power is used should be for servicing of new vehicles and not for repair and reconditioning of old or damaged vehicles.

9. It is true that Ext.P6 judgment of this Court contains certain findings which are almost fatal to the contentions which are presently raised by the Writ Petitioner. But at the same time the interim order dt.18.11.05 passed by this Court was also not challenged by the Electricity Board. It is clearly conceded that a portion of the workshop premises is used for servicing of vehicles. The controversy is as to the quantity of energy consumed in that portion. The documents placed on record by the petitioner along with the reply affidavit namely Exts.P8, P9

and P10 will show that the petitioner's contention is that Ext.R3(a) report does not reveal the true state of affairs is not totally without force. I notice from Ext.P7 that Board Order No.(FM) 1384/05 had been relied on by the Deputy Chief Engineer. The 2nd respondent-Deputy Chief Engineer is a statutory appellate authority and it was he who was directed by this Court to take a decision. The case that the petitioner had not been served with a copy of the board order No.(FM) 1384/05 Dt.3.5.05 is not seen disputed. So also the case of the petitioner that Ext.R3(a) report is on the basis of an inspection conducted without notice to the petitioner and that the petitioner was not given a copy of Ext.R3(a) report is also not seen controverted. This being the position, Ext.P7 has to be quashed.

10. The result is that I quash Ext.P7 and direct the 2nd respondent to take a fresh decision after hearing the petitioner. While taking decision Exts.P8,P9 and P10 will also be taken into account by the 2nd respondent who will permit the petitioner to submit his arguments in writing. The petitioner will have the permission to apply for the issuance of a Commission for local inspection and to suggest the names of five lawyers of the Kottayam Bar, having standing of more than 15 years at the Bar and the 2nd respondent will appoint one among them as the Commissioner. Fresh decision will be taken on the basis of the report of the Commissioner also. In view of the above order, Exts.P1 and P2 are

also quashed. However, the quashment of Ext.P1 is subject to the condition that the petitioner discharges at least 50% of the demand under Ext.P1 and continues to pay 50% of the bills which may be issued to him by the respondents on the basis of the findings in Ext.P7. In other words till such time as fresh decision is taken by the 2nd respondent as directed above, petitioner's liability for payment of power charges will be on the basis that 50% of the energy consumed in the premises is towards the workshop under LT IV and 50% is towards service centre/station under LT VII(A).

The writ petition is allowed to the above extent, but in the circumstances without any order as to costs.

PIUS C. KURIAKOSE, JUDGE

dpk/btt